

5/035/022
5/035/027***Front Gate Homes**

5635 South Waterbury Way Suite C-100

Salt Lake City, Utah 84121

Phone: (801) 274-3037

Fax: (801) 274-3062

Fax Cover Sheet**Date:** September 16, 2005**Fax to:** Paul Baker**Company:****Phone Number:** (801) 538-5261**Fax Number:** (801) 359-3940**From:** Kathi Hawkes**Pages:** (Including Cover Sheet)**Comments:** If you have any questions please call.

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MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made this 17 day of May, 2005 by and between Bluffdale City (the "City"), a Utah municipal corporation, Frontgate Homes, Inc. ("Frontgate"), a Utah corporation and the successor in interest to Bluffdale Mountain Homes L.C., and South Farm, LLC, ("South Farm") a Utah limited liability company (Frontgate and South Farm, collectively, the "Landowners").

RECITALS

Whereas, the City, the Landowners (collectively referred to as "Parties") and other real property owners within Planning Area No. 4 (the "Other Property Owners") are engaged in litigation (the "Litigation") regarding the disconnection of various properties from the political jurisdiction of the City;

Whereas, the Parties desire to resolve their differences and the interest of the Other Property Owners by way of a settlement of the Litigation; and,

Whereas, prior to spending the significant time and money necessary to draft the documents required to reach and implement a settlement and, during that time staying the litigation, the Parties each need to be assured of the intent of the other Parties in pursuing such a settlement.

Now, therefore, in consideration of the foregoing Recitals and the following mutual promises the Parties agree to the following:

TERMS

1. **General Methodology of Resolution.** The Parties contemplate that their disputes and the resulting Litigation will be resolved by the Parties entering into at least two development agreements (one between the City and Frontgate (the "Frontgate Development Agreement") and the other between the City and South Farm (the "South Farm Development Agreement")). The issues related to the Other Property Owners will be resolved as provided in Paragraph 6, below. The processes for negotiating the development agreements and the basic terms of the development agreements are more fully outlined below.

2. **Process for Adopting the Development Agreements and Zoning.**

2.1. **Zoning.** The Parties acknowledge that the Landowners' proposed developments may require specific zoning ordinance change(s). Immediately upon execution of this

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MOU, the Landowners will file applications for zone changes. The City shall seek to obtain a mutually acceptable contract employee or outsourcing agent and begin the decision process for considering such zone change(s) which would apply to all the real property within Planning Area No. 4. The City shall complete the zoning decision process no later than the approval of the Development Agreement(s) by the City. If the City uses an outsourcing agent or a contract employee, the Landowners filing the applications, will pay the City's costs for the outsourcing agent or contract employee which shall be offset against the Landowners' application fees.

2.2. **Development Agreements.** Also immediately upon execution of this MOU the Parties shall begin negotiating and drafting in good faith the Frontgate Development Agreement and the South Farm Development Agreement. The deadline for negotiating a mutually acceptable Development Agreement is September 1, 2005.

3. **General Provisions of the Development Agreements.** The Frontgate Development Agreement and the South Farm Development Agreement shall each:

3.1. **Length of Term/Extensions.** Be for an initial term of fifteen (15) years with two (2) extensions of five (5) years each which shall be automatic unless there is an uncured material default.

3.2. **Binding Effect.** Vest the properties with the uses, densities and other provisions of the City's laws in effect as of date of the execution of the development agreements providing vesting to the maximum extent allowable under Utah statutes or common law.

3.3. **Plan Processing Protocols/Outsourcing.** Contain provisions mandating the timely processing of plats and other applications for the development of the properties and providing for the outsourcing by the City of application reviews if the City is unable to process such development applications in a timely fashion. Timely Fashion shall be defined as the City or its Outsourcing agent shall take no longer than (30) days from the date of submittal to the City staff to review a development application and/or plat and return the application to the applicant with staff comments and concerns. Staff shall take no longer than (21) work days from the time applicant submits the redlined application back to staff to review and submit redline changes. Applicable regulatory body (Planning Commission or City Council) review and hearing process of a development application shall take no longer than (45) days from date of referral from City staff to the regulatory body to conduct public hearings and render a decision. If the City uses an outsourcing agent or contract employee, the owner of the land seeking development will pay the City's costs for the outsourcing agent or contract employee which shall be offset against the Landowner's application

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fees.

3.4. Connectivity to Existing and Proposed City Infrastructure. Contain provisions relating to the mandatory connectivity between the Landowners' developments and existing and future infrastructure of the City.

3.5 Construction of Future Infrastructure. Provide for mutual design, timing, approval, construction and mutually acceptable methodology for financing the infrastructure necessary to allow the developments contemplated by the development agreements.

3.6. Impact Fees. Contain provisions relating to impact fees that the City may adopt in the future in light of the system and project improvements to be constructed by the Landowners. To avoid placing an unfair burden upon the City's taxpayers, the City intends to adopt additional impact fees in compliance with Utah's impact fees statute and in a fashion comparable to that of nearby cities.

3.7. Non-Buildable Areas. Designate non-buildable areas i.e. those areas exceeding a 30% slope, environmentally sensitive areas, and open space areas, that are mutually agreeable with the City and Landowner.

3.8. Clustering. Prohibit clustering in area specified for low density (1-2 dwelling units per acre).

3.9. After Acquired Property. Provide that if the Landowners acquire other property within Planning Area 4, the Landowners shall have until May 1, 2006 to submit development agreements with the City for their after acquired properties. The basic provisions of these development agreements shall be the same as in the Frontgate Development Agreement and the South Farm Development Agreement.

3.10. Miscellaneous Provisions. The development agreements shall contain all of the provisions that are now a part of the standard practice for such agreements in the State of Utah including, but not limited to provisions relating to phasing, flexibility, opting into later adopted ordinances, exemptions from moratoriums, certificates of compliance and other provisions.

4. Specific Provisions of the South Farm Development Agreement. The South Farm Development Agreement shall generally approve the version of the Rosecrest General Plan Map submitted to the City on February 19, 2005, as more fully described in Exhibit "A" consisting of a map designated as February 19, 2005.- Bluffdale Revised Plan, with such modifications as the City and South Farm shall agree to. Specifically:

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4.1. **Grant of Density.** The City would grant an overall density of (2.6) dwelling units per acre based upon the gross acreage of South Farm's real property.

4.2. **Commercial Hub Location.** The commercial hub location (14400 South) and its size, sixty (60) acres, will be approved by the City as proposed in Exhibit "A" without modification or limitation.

4.3. **Welby-Jacob Canal Buffering.** The buffering of the transition area immediately west of the Welby-Jacob Canal of (4) tiers of (1) acre lots with roads and equestrian trails, will be provided as proposed in Exhibit "B", as a typical lot overlay to Exhibit "A".

4.4. **Low and Medium Density Transitioning.** The transition on properties immediately adjacent to (1) acre lots which are designated as "low" or "medium" density on Exhibit "A" shall use the lowest density sized lots next to the (1) acre lots, and then transition to the highest allowed density lots within the designated use area, in a direction away from the (1) acre lots as the density increases.

4.5. **Open Space, Parks, and Trails.** All open space, parks, and trails will be as proposed in Exhibit "A".

4.6. **Uses.** The uses of South Farm's property will be as proposed in Exhibit "A".

5. **Specific Provisions of the Frontgate Development Agreement.** The Frontgate Development Agreement shall generally approve the version of the Frontgate General Plan that is attached with this MOU as Exhibit "A" including the uses, locations of such uses, densities, open space and trails set out in Exhibit "A". Specifically:

5.1. **Grant of Density.** The City would grant an overall density of (2.6) dwelling units per acre based upon the gross acreage of Frontgate's real property.

5.2. **Welby-Jacob Canal Buffering.** The buffering of the transition area immediately west of the Welby-Jacob Canal of (3 to 4) tiers of (1) acre lots with roads and equestrian trails, will be provided as generally proposed in Exhibit "B", as a typical lot overlay to Exhibit "A".

5.3. **Golf Course Ownership.** If the golf course is designated or presented as open space, require the golf course to be owned by the City or a Special District acceptable to the City but only, if the City demands that ownership be by the City or Special

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District.

5.4. Golf Course Costs. Provide for golf course development costs to be paid by the developer or a mutually acceptable Special District.

5.5. Low and Medium Density Transitioning. The transition on properties in parcel 2 immediately adjacent to (1) acre lots which are designated as "low" or "medium" density on Exhibit "A" shall use the lowest density sized lots next to the (1) acre lots and then transition to the highest allowed density lots within the designated use area, in a direction away from the (1) acre lots as the density increases.

5.6. Open Space, Parks, and Trails. All open space, parks, and trails shall be generally located within the open space corridors as proposed in Exhibit "A".

5.7. Uses. The uses of Frontgate's property shall be generally as proposed in Exhibit "A".

6. Other Property Owners. The Other Property Owners shall have until May 1, 2006 to submit development agreements with the City for their properties. The basic densities and uses for other property owners shall be the same as for Frontgate and South Farm with the relevant differences having been considered regarding topography and other relevant factors.

7. Mountain View Transportation Corridor. The City shall, in a form and manner acceptable to the Landowners, commit to support, in writing, the current UDOT location and alignment of the Mountain View Transportation Corridor, including intersections, at the locations shown on Exhibit "A". The Corridor Alignment shall be shown on all plats submitted by any and all affected property owners.

8. The Litigation. So long as all Parties believe that reasonable progress is being made to complete the settlement of this matter the Parties shall stay the litigation and extend the times for completion of discovery. All settlement negotiations, including this MOU, shall be conducted pursuant to Rule 408, Utah Rules of Evidence.

9. Termination. At any time, either the Landowners or the City may give notice to the other party that this MOU is terminated and that the Litigation will be pursued aggressively.

10. Dismissal of Litigation. At such time as the Frontgate Development Agreement and the South Farm Development Agreement are executed and recorded, then the Litigation shall be dismissed with all Parties bearing their own costs, attorneys' fees and expenses, except that South

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Farm and Frontgate will pay costs and attorneys' fees incurred by the City up to \$100,000.

11. **Confidentiality.** The Parties acknowledge that it is in all of their best interests to conduct negotiations towards settlement in a private manner and therefore agree, to keep any negotiations towards the development agreements private and confidential.

APPROVED BY FRONTGATE HOMES,
a Utah corporation

APPROVED BY SOUTH FARM, L.C.,
a Utah limited liability company

By: *Robert A. Jones*
ROBERT A. JONES, President
SOUTH HILLS DEVELOPMENT

By: *Donald E. Wallace*
DONALD E. WALLACE
Vice President of the Managing
Member, Sorventures, Inc.

APPROVED BY BLUFFDALE MOUNTAIN HOMES L.C.,

By: *Robert A. Jones*
ROBERT A. JONES
SOUTH HILLS DEVELOPMENT

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APPROVED BY BLUFFDALE CITY:

Wayne Mortimer
WAYNE MORTIMER, Mayor

5/23/05
Date

Craig Briggs
CRAIG BRIGGS, Council Member

5/24/2005
Date

Morris Clark
MORRIS CLARK, Council Member

5/23/05
Date

Jesse W. Kelley
JESSE KELLEY, Council Member

5/24/05
Date

Laurie Maxwell
LAURIE MAXWELL, Council Member

5/18/05
Date

MARTHA SPEED, Council Member

Date

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APPROVED AS TO FORM:


BRUCE R. BAIRD
Attorney for Petitioners


HOLLIS S. HUNT
Attorney for Petitioners

APPROVED AS TO FORM


DALE F. GARDINER
Attorney for Respondent

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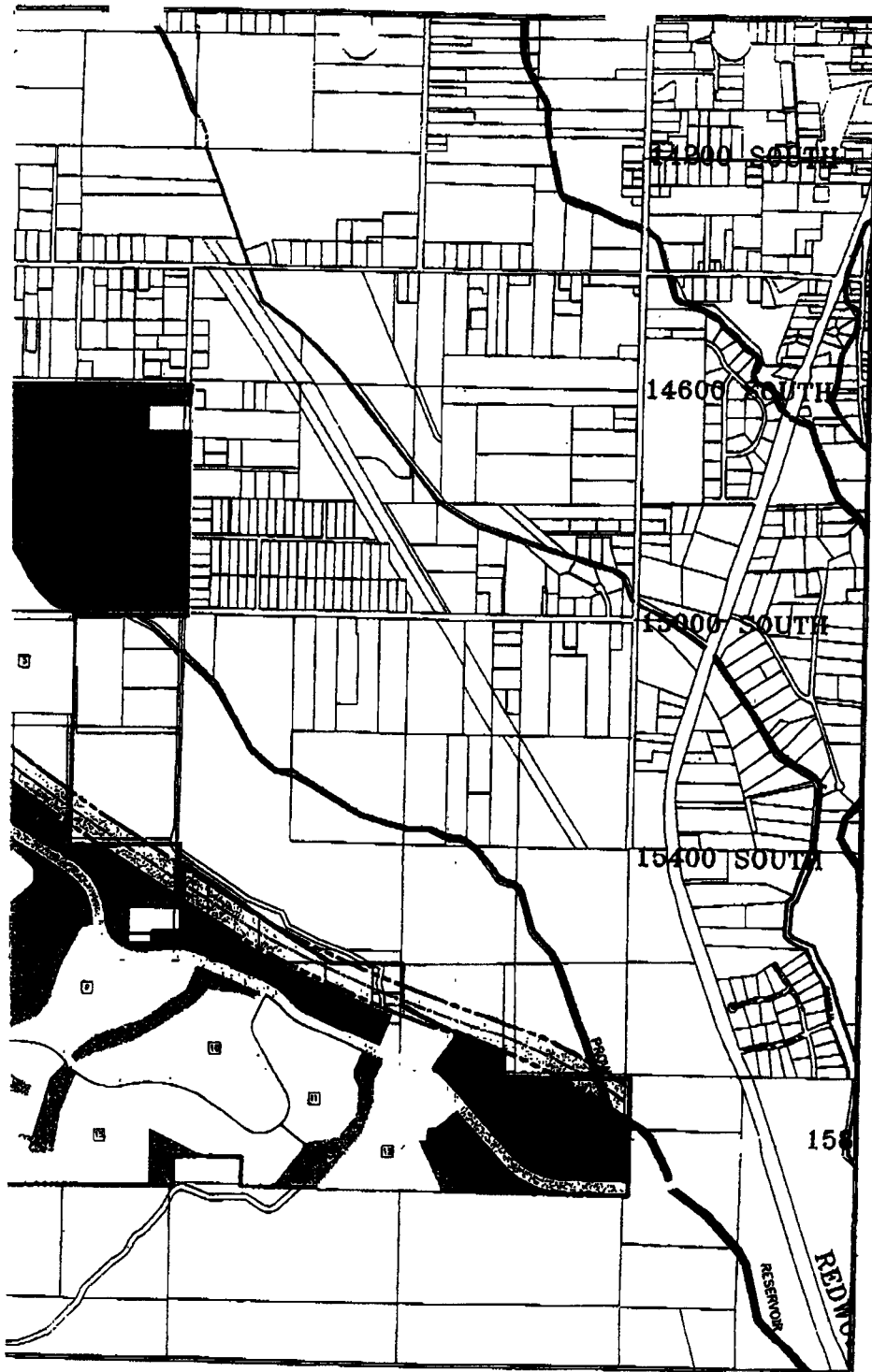
EXHIBIT

A

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WWW.ROSECRISTUTAH.COM
CDP: 704-200-6352/REB
INC

211 S. WEST TENDLE
SALT LAKE UT
84115

T.801.461.9700
F.801.461.9722

LANDUSE PLAN

PREPARED BY

MOB

DATE

2-19-05

JOE R2

REVISION DATE

ORIGINAL DATE

2-19-05

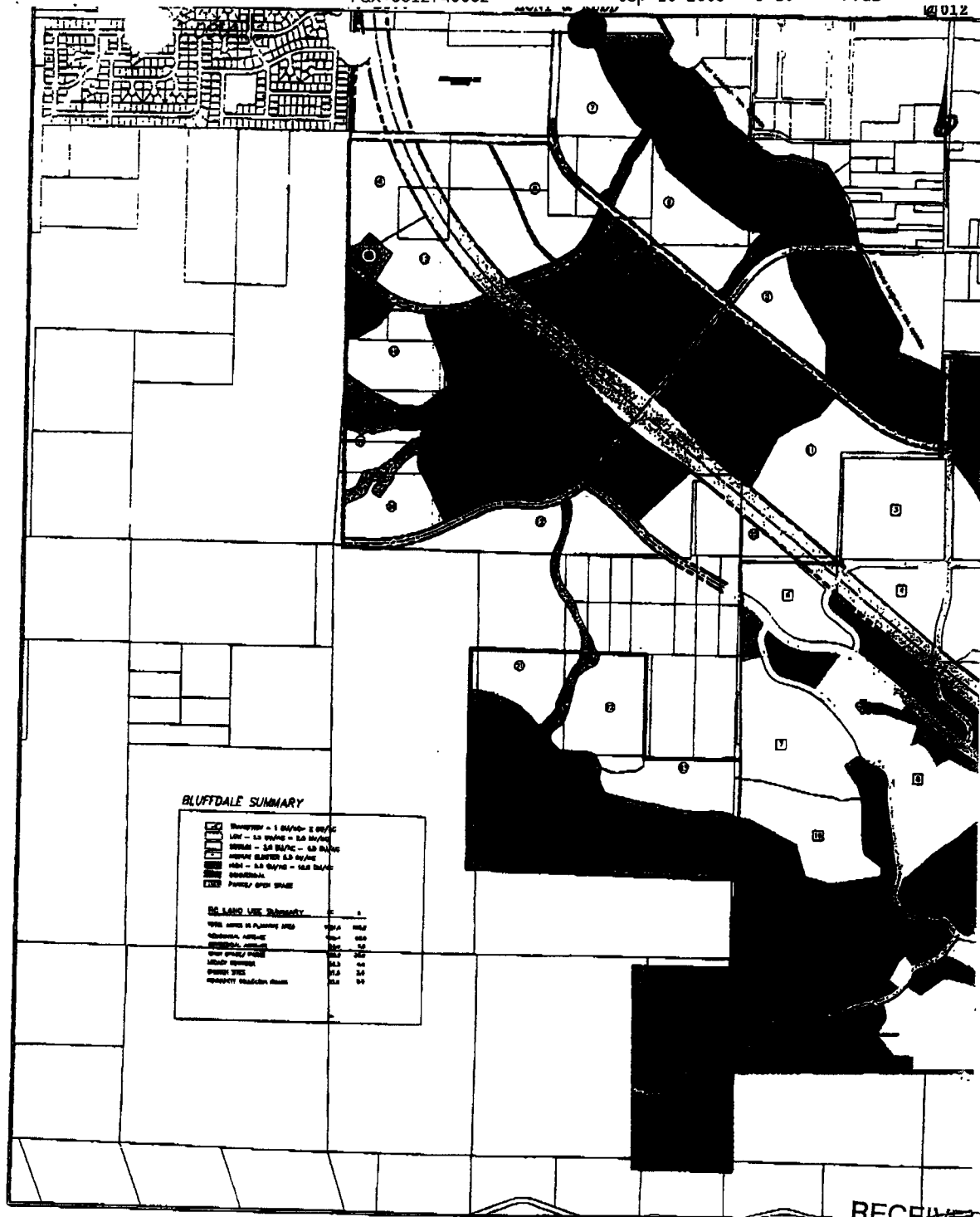
PROJECT NAME:

BLUFFDALE
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PLAN

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EXHIBIT

B

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2311 S. WEST TEMPLE
SALT LAKE, UT
84115T. 801.461.9700
F. 801.461.9722

TYP. TRANSITIONAL LAYOUT

DRAWN BY:

JRH

DATE:

2005-03-02

REVISED:

2005-03-02

November 2003

PROJECT NAME:

FOR
ILLUSTRATIVE
PURPOSES
ONLY

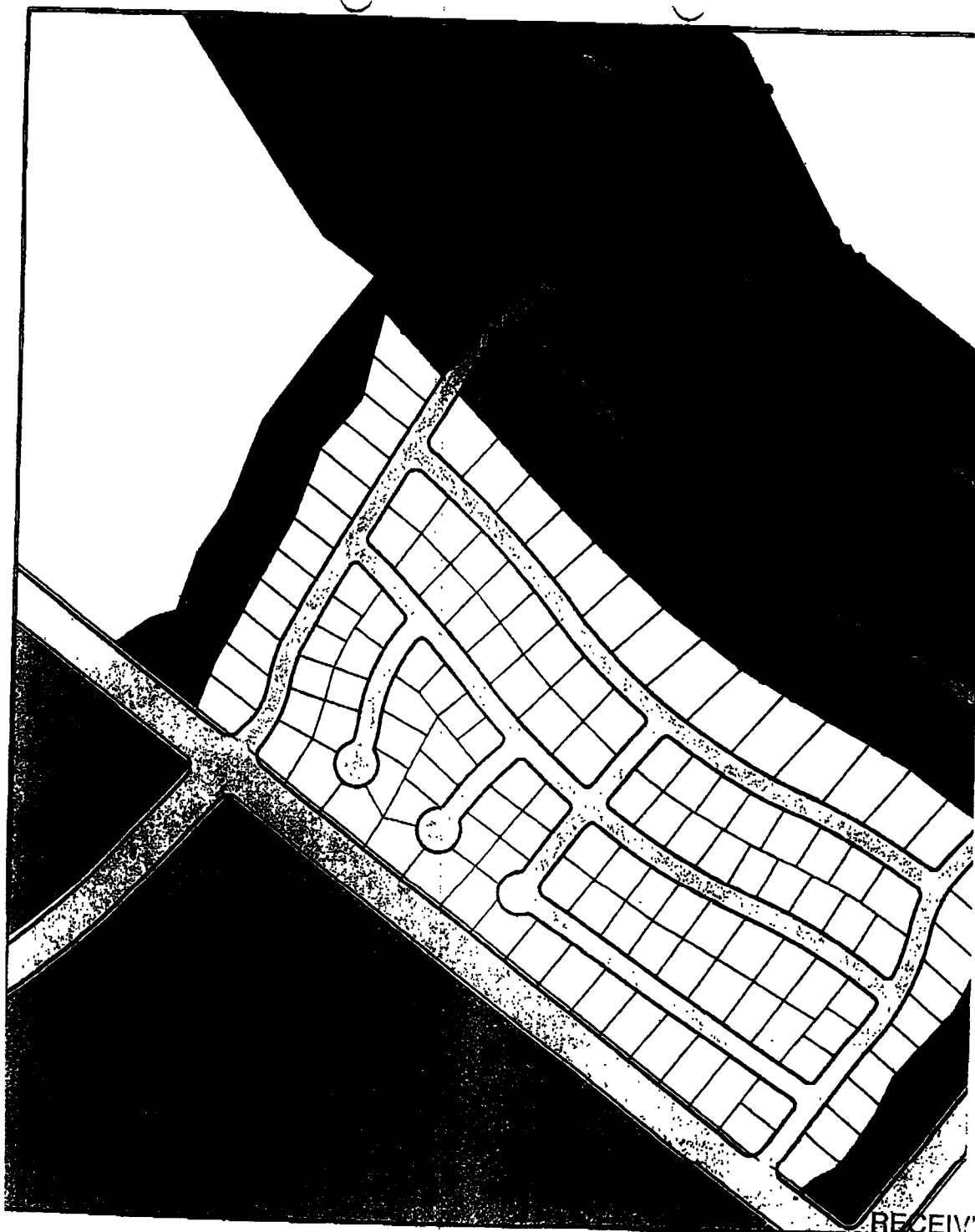
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